IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos. 23081, 23083 and 31714 of 2007
and
M.P. Nos. 1 and 2 of 2007 in respective W.Ps.

T.Tamilarasi .. Petitioner in W.P. No.23081 of 2007

M.Shanthi .. Petitioner in W.P. No.23083 of 2007

R.Muthukrishnan .. Petitioner in W.P. No.31714 of 2007

vs.

1. The Government of Tamil Nadu
Rep. by its Secretary
Labour and Employment Department
Fort St. George, Chennai

2. The Commissioner of Labour
D.M.S.
Teynampet, Chennai - 6 .. Respondents in all W.Ps.

W.P. Nos. 23081 and 23083 of 2007 filed under Article 226 of the Constitution of India seeking for issue of writ of Mandamus directing the respondents to consider the case of the petitioners for promotion as Assistant Commissioners of Labour for the year 2007-2008 by relaxing rule 2 of the Special Rules for the Tamil Nadu Labour Service and upon being found fit otherwise, promote them as Assistant Commissioner of Labour with all consequential benefits.

W.P. No. 31714 of 2007 filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorarified Mandamus calling for the records of the first respondent in Letter No. 19958/E1/07-4 dated 22.8.2007, quash the same and consequently direct the respondents to consider the case of the petitioner for promotion as Assistant Commissioner of Labour for the year 2007 - 2008 by relaxing rule 2 of the Special Rules for the Tamil Nadu Labour Service and upon being found fit otherwise, promote him as Assistant Commissioner of Labour with all consequential benefits.

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For Petitioner in W.P. Nos. 23081 & 23083 of 2007 : Mr.Vijay Narayan, SC for Mr.Karthick

For Petitioner in W.P. No. 31714 of 2007 : Mr.R.Syed Mustafa

For Respondents : Mr.G.Sankaran, Spl. GP
Assisted by
Mrs.Bhavani Subbarayan, AGP

COMMON ORDER

I have heard the arguments of Mr.Vijay Narayan, learned Senior Counsel leading Mr.Karthick, learned counsel appearing for the petitioners in W.P. Nos. 23081 and 23083 of 2007, Mr.R.Syed Mustafa, learned counsel appearing for the petitioner in W.P. No. 31714 of 2007 and Mr.G.Sankaran, learned Special Government Pleader, assisted by Mrs. Bhavani Subbarayan, learned Assistant Government Pleader, representing the respondents and have perused the records.

2. The three petitioners herein are working as the Inspectors of Labour in the Tamil Nadu Labour Service, which is formed by the Special Rules framed under Article 309 of the Constitution of India. They are all aspirants for the post of Assistant Commissioner of Labour, which is the next higher post in the hierarchy of the Labour Department. The Special Rules for the Assistant Commissioner of Labour describes the following qualifications for being promoted to the said post.

| | | |
|---|---|---|
| "Assistant Commissioner of Labour | Promotion from among the holders of the post of Labour Officer or Inspector of Plantations or Inspectors of Labour or Administrative Officers or Public Relations Officer in Headquarters | (i) Must possess the minimum general educational qualification.<br>(ii) Must have passed Department tests of Labour and Factories Part – A and Part – B.<br>(iii) Must be an approved Probationer.<br>(iv) Must have experience in the posts as noted below excluding the period spent on leave in the respective posts:- |

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(1) in the post of Labour Officer or Administrative Officer or Public Relations Officer for a period of not less than 12 calender months.

(2) in the post of Inspector of Plantations for a period of not less than 12 calender months; and

(3) in the post of Inspector of Labour for a period of not less than 12 calender months.

Provided that for a period of two years from the date of issue of this Amendment a person who has not served either Labour Officer or Administrative Officer or Public Relations Officer for a period of not less than 12 calender months, in the post of Inspector of Plantations for not less than 12 calender months, and in the post of Inspector of Labour, for not less than 12 calender months, or in any equivalent posts on deputation or on foreign service, shall also be eligible for promotion to the post of Assistant Commissioner of Labour, if he is otherwise eligible for promotion to the said post."

3. It is an admitted fact that the petitioners are all eligible to be considered for the post of Assistant Commissioner of Labour and they possess the educational qualification and they are approved probationers in the present post of Inspector of Labour. The only controversy is with reference to the experience that is required as prescribed in the Special Rules. The Rules contemplate that the person, who aspires to get promoted to the post of Assistant Commissioner should have the experience in all the three wings of the Department, viz., 12 months service in the post of Labour Officer, 12 months service in the post of Inspector of Plantations and 12 months service in the post of Inspector of Labour.

4. It is contended by the petitioners that while it is ideal for an officer, who was selected to the post of Labour Officer, to get posted either as a Labour Officer or as an Inspector of Plantations or as an Inspector of Labour, but, however, insofar as the posting and transfers are concerned, it is not within their jurisdiction and it is completely left to the controlling

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authority. It may happen at many times that due to exigencies of service or by fortuitous circumstances, a person may get posted to different categories. But there is no right on the part of the serving Officer to seek for a posting in a particular place. But, however, if any person, who refuses the posting to a particular place, whatever may be the reason, then such a conduct may be put against them to deny promotion and also be told that they do not have the minimum experience required to hold the next higher post. In fact, it is only with this view, the Government of Tamil Nadu, Personnel and Administrative Reforms Department sent a circular dated 11.01.2000 to all the Secretaries to Government and Heads of Departments and the relevant passage is extracted below:

> "I am directed to state that in certain departments of the Government, training or working experience in a particular wing is a requirement for promotion / appointment to higher post as per Special Rules for such posts. However, due to some reasons or the other, the officers are not allowed to acquire the training or experience by posting them to such wing as required in the Special Rules. As a result, it ultimately affects the individual's career and also requires relaxation of relevant service rules. It is not the responsibility of the individual to be sent for training or posted in a particular wing in which working experience is required for promotion / appointment to higher post under special rules, etc. but it is the responsibility of the Department concerned to send him for training or to post him to a particular wing for a specific period required for his promotion / appointment to gain experience.
>
> 2. In this connection, the following observations of Tamil Nadu Administrative Tribunal in O.A. No. 3068 of 1997.
>
> > "It is for the respondents to post the persons in different units to gain experience as required by the rules to make them eligible for promotion / appointment and it is not necessary for the applicant to ask for it. It is the responsibility of the department to send persons to other Corporations in such a manner that everyone has equal chance of acquiring a kind of experience insisted upon by the rules unless for a valid reason is denied an opportunity of acquiring experience. This is a part of job of cadre management in a rational manner. This responsibility cannot be shifted to the shoulders of the applicant.

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> Therefore, there is no force in the contention of the respondents that the applicant has not asked for such a posting in a Corporation."

3. In view of the circumstances mentioned in para 1 and 2 above, the Departments of Secretariat / and the Head of Department are therefore requested to post the officers to the particular training / wing in which working experience is required for promotion / appointment to higher post under special rules at the earliest, strictly on the basis of seniority, and if any official does not join the training or post in the particular wing when given, be may be informed about the adverse effect of avoiding the posting and a declaration as specified in the Annexure to the letter may be obtained from him and added to his Service Register and Personal File."

Along with the said circular, the annexure contains a declaration to be obtained from the individual, who resists the posting to different places.

5. It is not the case of the respondents that any of the three petitioners have granted any such declaration when they were posted to man a particular post. The first respondent has thoroughly misunderstood the spirit behind the letter issued by the Government referred to above. On the contrary, the Commissioner of Labour, without reference to the Government Order, issued a circular memorandum dated 18.10.2005 and the relevant passage found therein is extracted below:

> "It is noted that inspite of postings in the places as per the requirement the officers are not willing to be served in these posts. Even some of the officers have not brought to the notice of the administration that they may be given postings in the field for qualifying themselves as per the G.O. cited. Therefore it is made clear that it is the responsibility of the officers concerned to represent to the administration to serve in the specific posts prescribed for promotion to the next higher category. It is also made clear that no exemption shall be considered at a later date if they do not qualify for promotion to the next higher category for want of prescribed norms as stated above."
>
> [Emphasis added]

6. It is a complete misreading of the Government letter and it shifts the onus on the individual to seek for a particular posting, which is neither legally permissible nor practicably feasible. Even if such requests are made for a particular posting, there is no obligation on the part of the cadre

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controlling authority to give a posting to such officers so as to enable them to complete the minimum eligible service for the next post. Therefore, when the panel for the post of Assistant Commissioner of Labour for the year 2007-2008 was prepared, the details regarding the various officers were sought for by the second respondent Commissioner of Labour, vide Memorandum dated 10.4.2007. In that letter, the name of Tamilarasi, petitioner in W.P.No. 23081 of 2007 is found as serial No. 9 and M.Santhi, petitioner in W.P. No. 23083 of 2007 is found as serial No. 10 and R.Muthukrishnan, petitioner in W.P. No. 31714 of 2007 is found as serial No. 16. However, by a further Memorandum dated 25.5.2007, the following particulars were given in respect of the three petitioners.

| Sl. No. | Name and Designation of the Officer | Post in which not worked |
|---|---|---|
| 1 | T.Tamilarasi<br>Inspectress of Labour<br>Office of the Joint Commissioner of Labour<br>Chennai | Worked as Inspector of Plantations for 10 months out of 12 months. Working as Inspectress of Labour since 22.02.2007. |
| 2 | M.Santhi<br>Inspectress of Labour<br>Thiruvallur | Working as Inspectress of Labour since 30.6.2006. Inspector of Plantations, 12 months. |
| 3 | R.Muthukrishnan<br>Inspector of Labour<br>Karur | Working as Inspector of Labour since 05.4.2007. |

7. Therefore, in the case of Tamilarasi, the petitioner in W.P. No. 23081 of 2007, it was stated that she had lacked two months of experience in the post of Inspector of Plantations and that as an Inspector of Labour, she had worked only for three months on the date of Memorandum. In the case of M.Shanthi, petitioner in W.P. No.23083 of 2007, it is stated that she had worked as Inspector of Labour since 30.6.2006 which means she lacks one month experience and as an Inspector of Plantations, she had not worked for 12 months. In the case of R.Muthukrishnan, petitioner in W.P. No. 31714 of 2007, it is stated that he is working as Inspector of Labour since 05.4.2007, which means he had only one month experience as Inspector of Labour. This clearly shows that as many as 30 officers are ineligible to be considered for the post of Assistant Commissioner of Labour. They were instructed to qualify on or before the

crucial date of preparation of panel. It is this communication, which has prompted the petitioners to come forward with these writ petitions seeking for a relaxation in their favour from the eligibility rule of experience.

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8. Mr. Vijay Narayan, learned Senior Counsel leading Mr.Karthick, learned counsel appearing for the petitioners in W.P. Nos. 23081 and 23083 of 2007, submitted that apart from the Rule being inelastic, the second respondent's interpretation to the Government's letter dated 11.01.2000 is contrary to the spirit of the said letter and that it was as if the Government never exercises the power of relaxation whenever exigency arose. In fact, they were able to get certain information by invoking the Right to Information Act. Learned Senior Counsel produced two orders one relating to one U.Umadevi, who belongs to the same service and who was given relaxation for including her name in the panel of Assistant Commissioner for the year 2005-2006. A copy of the G.O. (2D) No. 1 Labour and Employment (E1) Department dated 09.01.2007 is furnished in the typed set. In the same way, in respect of one Alagesan, who is posted as the Joint Commissioner, he was given necessary relaxation for holding the post of Deputy Commissioner of Labour and he was promoted for the said post for the year 2003 - 2004. In these cases, the relaxation proposals were sent to the Secretary to Government by the second respondent and the same was permitted by the first respondent by office note dated 15.12.2005. Therefore, the learned Senior Counsel argued that the benefit granted in respect of Ms.Umadevi and Mr. Alagesan must also be extended in the case of the petitioners.

9. Mr. G. Sankaran, learned Special Government Pleader representing the respondents, by placing reliance upon the counter affidavit filed, submitted that the Rules will have to be scrupulously followed and there are juniors to the petitioners, who have completed the experience requirements made under the Special Rules. He also submitted that the relaxation is only an exception. Therefore, there cannot be universal application for relaxation of rule.

10. A rejoinder has also been filed by the petitioners stating that it was not due to their fault that they did not get posting at the relevant place and in the case of R.Muthukrishnan, the petitioner in W.P. No. 31714 of 2007, despite his request for a posting, he was not given the same.

11. Mr. Vijay Narayan, learned Senior Counsel, by placing reliance upon the judgment of the Supreme Court reported in 1996 (8) SCC 762 [State Bank of India and others v. Kashinath Kher and others], contended that when there is no scope for the petitioners to demand a posting, they should not be denied promotion only on the ground of want of experience in the other post. He also stated that in respect of Inspector of Plantations, only 12 posts are available in the Department and it is difficult to get a posting if all the persons holding post of Labour Officer seek for the same. The learned Senior Counsel relied on the following passage found in paragraphs 12 and 17 of the judgment of

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the State Bank of India case (cited supra).

Para 12: "..... But it must be remembered that in considering whether the candidate has completed the line of assignment or rural/semi-urban service for the required period, a clear demarcation be drawn between the officers who either due to volitional refusal to serve and those on account of inaction or deliberate omission on the part of the controlling authority did not have an opportunity as the case may be, to get the required service qualifications. Therefore, an exercise requires to be done by the appellant to identify this grouping and consider all those candidates who have otherwise become eligible but did not get opportunity, for no fault of theirs, to secure the service qualification but should be denied to those who volunteered not to go for line assignment or rural or semi-urban service as the case may be, and then to consider according to the criteria prescribed under the rules or the circulars issued from time to time."

12. Mr. G. Sankaran, learned Additional Government Pleader, representing the respondents, contended that in that decision, the Supreme Court did not grant an exemption to all the persons, who did not have rural posting. But, however, the counsel failed to note the following passage found paragraph 10 of the judgment, which reads as follows:

Para 10: "..... It is true that the criteria being conditions of service cannot be relaxed. Service conditions being essential conditions cannot be relaxed and it is not the case of the appellant-Bank that they have done that exercise. What the Board has done is giving an opportunity to the officers, who are otherwise eligible, to complete the required service conditions and then they would be given promotion, on completion of requisite conditions thereof. In view of the fact that they did not have the opportunity to serve and complete the qualifying service, with a view to see that those who had the advantage of completing the service would not steal a march over the seniors, they equally adopted an equitable principle of putting the officers in List B and giving them seniority after promotion below his immediate senior in MMGS-II so that injustice will not be meted out to such officers for no fault of theirs. The procedure adopted by the Bank is just, fair and reasonable."

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13. Therefore, in that case, the State Bank of India protected the seniority of persons, who did not get rural posting. In the present case, the respondents did not have any such safeguard for being overruled on the ground that they did not have the experience as found in the service. Even in the Memorandum dated 25.5.2007, they were merely asked to complete the other postings so that in the future years, their names will be considered. There is no guarantee for any seniority. Under these circumstances, the case pleaded by the learned Senior Counsel for the petitioners is well-founded. Even in the State Bank of India case (cited supra), there was no evidence on any particular person being given exemption by the Department whereas in the present case, the exemption granted in favour of Umadevi and Alagesan is a clear case where the respondents are having a pick and choose approach and had not treated everybody fairly in the same way. The circumstances that are available to Umadevi and Alagesan must also be made available to the petitioners and there is no reason why the respondents cannot grant such an exemption in favour of the petitioners also. In fact, in the case of one of the petitioners, the experience wanting is only two months.

14. In the result, all the writ petitions will stand allowed. The respondents are directed to include the names of the petitioners in the panel for the post of Assistant Commissioner of Labour and if necessary, to give relaxation from the Special Rules. No cost. Connected Miscellaneous Petitions are closed.

gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Government of Tamil Nadu
Labour and Employment Department
Fort St. George
Chennai

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2. The Commissioner of Labour
D.M.S.
Teynampet
Chennai - 6

+ 2 ccs to Mr. Karthik, Advocate SR No. 69590
+ 1 cc to Mr. R. Syed Mosthafa, Advocate SR no. 69613
+ 3 ccs to the Government Pleader SR Nos.69465, 69466 and 69468

GG(CO)
SR/30.11.2007

Common order in

W.P. Nos. 23081, 23083
and 31714 of 2007

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